

ORIGINAL

# OPEN MEETING



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## MEMORANDUM

Arizona Corporation Commission

DOCKETED

RECEIVED

TO: THE COMMISSION  
AUG 27 2013

2013 AUG 21 P 2:53

FROM: Utilities Division  
DOCKETED BY ne

AZ CORP COMMISSION  
DOCKET CONTROL

DATE: August 27, 2013

RE: THE APPLICATION OF H2O, INC. FOR APPROVAL OF THE SALE OF ITS ASSETS AND CONDITIONAL CANCELLATION OF ITS CERTIFICATE OF CONVENIENCE AND NECESSITY (DOCKET NO. W-02234A-13-0237)

### INTRODUCTION

On July 3, 2013, H2O, Inc. ("H2O" or "Company") filed an application with the Arizona Corporation Commission ("Commission" or "ACC") for approval of the sale of its assets and operations to the Town of Queen Creek ("Town") and for the conditional cancellation and extinguishment of H2O's Certificate of Convenience and Necessity ("CC&N") to provide water service.

### BACKGROUND

H2O is an Arizona corporation, certificated to provide water utility services in the vicinity of the Town and adjacent areas, pursuant to Decision No. 43476 issued July 23, 1973. H2O provides service to 9,637 connections across a service territory of approximately 19 square miles. Staff's legal description and map of the CC&N is attached as Exhibit 1 to the Proposed Order accompanying this Memorandum.

After a May 21, 2013 special election, the Town's voters approved (by a vote of 2,550 in favor to 379 against) the acquisition of H2O. An Asset Purchase Agreement ("Purchase Agreement") between H2O and the Town was executed on June 19, 2013. According to the Company, the Purchase Agreement provides that the closing of the parties' transaction (close of escrow) is conditioned upon receipt of an Order from the Commission cancelling H2O's CC&N. The main provisions of the Purchase Agreement are as follows:

1. The Town will acquire all of the assets of H2O as outlined in the Purchase Agreement, including its right to provide water utility service to customers residing within H2O's CC&N. The total purchase price is \$15,000,000 with \$500,000 earnest money deposit placed in escrow.
2. The Town will assume all of H2O's obligations under existing mainline extension agreements as outlined in the Purchase Agreement.
3. The Town will obtain a loan from the Water Infrastructure Financing Authority of Arizona ("WIFA") as established in the Purchase Agreement. H2O is presently indebted

to WIFA in the approximate amount of \$140,000 which H2O will retire in full at closing together with any other indebtedness which WIFA requires to be retired/addressed, which will then permit the WIFA Loan to be consummated.

4. The Town will assume all existing customer accounts, including the customer deposits. The itemized amount of all outstanding Meter Deposits relating to all current customer accounts is set forth in the Purchase Agreement. The parties stipulate and agree that \$267,470 is due to be refunded via bill credit to customer accounts at closing.

## THE H2O WATER SYSTEM

H2O's existing water system is comprised of 11 wells (6 inactive wells and 5 wells in service) having a combined production rate of 7,540 gallons per minute, 13 storage tanks having a combined storage capacity of 13,365,638 gallons, and a distribution system serving over 9,600 customers. H2O's wells have adequate well production and storage capacity to serve the existing connections. Staff reviewed H2O's financial condition as documented in H2O's 2012 Annual Report.

According to the Company, the Town intends to interconnect the Town's water system with H2O's system which would allow for redundancy of the water supply in the event of emergencies. The application indicates that the Town will also provide wastewater service to much of the area, and the cancellation of H2O's CC&N will have the effect of combining water and wastewater service in one municipal provider. H2O and the Town believe approval of the application is in the public interest. Staff agrees.

## RATES AND CUSTOMER SERVICE

After the acquisition, the Town will charge all customers the Town's currently existing rates. The vast majority of H2O's customers are served by ¾ inch meters and use between 7,000 and 10,000 gallons per month. Thus, the average H2O customer should see minimal impact (\$0.46 to \$1.22) as illustrated in the following tables. The few H2O customers served by a 5/8" x 3/4" meter will continue receiving service at their existing H2O tariffed rates from the Town.

**Monthly Water Bill Comparison  
¾" meter (93% of H2O's Customers)**

Current Water Rates		Town of Queen Creek	H2O
Minimum Charge ¾"		\$18.33	\$15.60
0	1,000	0	1.43
1001	3,000	1.77	1.43
3,001	10,000	1.77	2.15
10,001	20,000	2.37	2.58
20,001	Above	2.96	2.58

**Actual Water Bills at Gallons Used**

Usage (gallon)	H2O Water Bill	Town of Queen Creek Water bill	Difference
5,000	\$24.19	\$25.41	+\$1.22
7,000	\$28.49	\$28.95	+\$0.46
10,000	\$34.94	\$34.26	-\$0.68
15,000	\$47.84	\$45.51	-\$2.33
20,000	\$60.74	57.36	-\$3.38

The Town has experience owning and operating municipal water and wastewater utilities and has indicated that: (1) it intends to provide the same level of service to customers residing outside its existing service area at this date (i.e., H2O's former customers upon consummation) as it provides to customers living within the Town's service area; and (2) the new H2O customers will be governed by the same rate structure as customers located within the Town's existing service area. Thus, no distinction will be drawn, for rate or service purposes, between its current customers and customers now served by H2O. The ACC has previously approved the sale of another water company, Queen Creek Water Company, to the Town of Queen Creek (see Decision No. 70204), and the Town successfully assumed ownership and service without issue.

The Utilities Division Consumer Services' Database indicates that over the last three years, there have been six complaints against H2O concerning mostly billing issues. All complaints have been resolved. Consumer Services has not received any filings in opposition to this sale.

**CUSTOMER NOTICE**

H2O printed notice of this application in the *East Valley Tribune* on August 12, 2013. H2O also indicated that it mailed notice of this application to its customers on August 8, 2013.

**COMPLIANCE****ACC**

The Utilities Division Compliance Database does not indicate that H2O has any ACC compliance delinquencies. H2O is in good standing with the Commission's Corporations Division as well.

**Arizona Department of Environmental Quality ("ADEQ")**

***H2O Water System***

Per ADEQ Compliance Reports dated July 12, 2013, ADEQ reported that the H2O water system, Public Water System ("PWS") No. 11-060, has no major deficiencies and is currently delivering water that meets water quality standards required by 40 C.F.R. 141 (National Primary Drinking Water Regulations) and the Arizona Administrative Code ("A.A.C."), Title 18, Chapter 4.

***Town's Water System***

ADEQ or its formally delegated agent, the Maricopa County Environmental Services Department ("MCESD"), has reported (via Compliance Status Reports dated July 15, 2013) that the Town's water system (PWS No. 07-033) has no major deficiencies and is currently delivering water that meets water quality standards required by 40 C.F.R. 141 (National Primary Drinking Water Regulations) and A.A.C., Title 18, Chapter 4.

**Arizona Department of Water Resources ("ADWR")**

***H2O Water System***

The Company is located within an Arizona Department of Water Resources ("ADWR") Active Management Area ("AMA"). According to an ADWR Compliance Status Report dated July 16, 2013, ADWR reported that the H2O water system is currently in compliance with departmental requirements governing water providers and/or community water systems.

***Town's Water System***

The Town is located in the Phoenix AMA. According to an ADWR Compliance Status Report dated August 7, 2013, ADWR reported that the Town's water system is currently in compliance with departmental requirements governing water providers and/or community water systems.

**CONCLUSIONS AND RECOMMENDATIONS**

The Town has entered into a Purchase Agreement with H2O executed on June 19, 2013, to acquire H2O's assets and customers. The Town has experience owning and operating municipal water and wastewater utilities and will ensure a seamless transaction. Staff agrees with the Town and H2O that the sale of H2O is in the public interest.

The Town has shown its intentions to honor all of H2O's obligations under mainline extension agreements and to assume all existing customer accounts, including customer deposit obligations. The Town has also committed that H2O customers located inside and outside of the Town's boundaries will receive equal service and treatment as current Town customers.

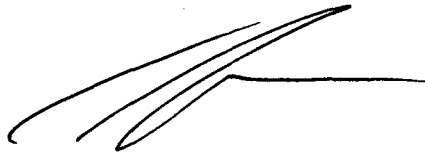
THE COMMISSION

August 27, 2013

Page 5

Staff recommends approval of the transfer of the assets of H2O, Inc. to the Town of Queen Creek and that the Commission cancels the CC&N of H2O with the following conditions:

1. That H2O file documentation of the successful close of escrow finalizing the sale of H2O to the Town with the Commission in this docket.
2. That the Town honors all liabilities of H2O relating to mainline extensions and customer deposits.



Steven M. Olea  
Director  
Utilities Division

SMO:VW:sms\RRM

ORIGINATOR: Vicki Wallace

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**BEFORE THE ARIZONA CORPORATION COMMISSION**

BOB STUMP  
Chairman  
GARY PIERCE  
Commissioner  
BRENDA BURNS  
Commissioner  
BOB BURNS  
Commissioner  
SUSAN BITTER SMITH  
Commissioner

IN THE MATTER OF THE APPLICATION  
OF H2O, INC. FOR APPROVAL OF SALE  
OF ASSETS AND CONDITIONAL  
CANCELLATION OF ITS CERTIFICATE  
OF CONVENIENCE AND NECESSITY  
TRANSFER OF CUSTOMER BASE AND  
ASSETS.

DOCKET NOS. W-02234A-13-0237  
DECISION NO. \_\_\_\_\_  
ORDER

Open Meeting  
September 10 and 11, 2013  
Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

INTRODUCTION

1. On July 3, 2013, H2O, Inc. ("H2O" or "Company") filed an application with the Arizona Corporation Commission ("Commission or "ACC") for approval of the sale of its assets and operations to the Town of Queen Creek ("Town") and for the cancellation and extinguishment of H2O's Certificate of Convenience and Necessity ("CC&N") to provide water service.

BACKGROUND

2. H2O is an Arizona corporation certificated to provide water utility services in the vicinity of the Town of Queen Creek and adjacent areas, pursuant to the Commission's Decision No. 43476 issued July 23, 1973.

...

1           3.     H2O indicates that its CC&N encompasses approximately 19 square miles and  
2 provides service to 9,637 connections. Staff's legal description and map of the CC&N are  
3 attached as Exhibit 1.

4           4.     After a May 21, 2013 special election, the Town's voters approved (by a vote of  
5 2,550 in favor to 379 against) the acquisition of H2O. An Asset Purchase Agreement ("Purchase  
6 Agreement") between H2O and the Town was executed on June 19, 2013. According to the  
7 Company, the Purchase Agreement provides that the closing of the parties' transaction (close of  
8 escrow) is conditioned upon receipt of an Order from the Commission cancelling H2O's CC&N.  
9 The main provisions of the Purchase Agreement are as follows:

- 10           •     The Town will acquire all of the assets of H2O as outlined in the Purchase  
11 Agreement, including its right to provide water utility service to customers residing  
12 within H2O's CC&N. The total purchase price is \$15,000,000 with \$500,000 earnest  
13 money deposit placed in escrow.
- 14           •     The Town will assume all of H2O's obligations under existing mainline extension  
15 agreements as outlined in the Purchase Agreement.
- 16           •     The Town will obtain a loan from the Water Infrastructure Financing Authority of  
17 Arizona ("WIFA") as established in the Purchase Agreement. H2O is presently indebted  
18 to WIFA in the approximate amount of \$140,000 which H2O will retire in full at closing  
19 together with any other indebtedness which WIFA requires to be retired/addressed,  
20 which will then permit the WIFA Loan to be consummated.
- 21           •     The Town will assume all existing customer accounts, including the customer  
22 deposits. The itemized amount of all outstanding Meter Deposits relating to all current  
23 customer accounts is set forth in the Purchase Agreement. The parties stipulate and  
24 agree that \$267,470 is due to be refunded via bill credit to customer accounts at closing.

#### 25     THE H2O WATER SYSTEM

26           5.     H2O's existing water system is comprised of 11 wells (6 inactive wells and 5 wells  
27 in service) having a combined production rate of 7,540 gallons per minute, 13 storage tanks having  
28 a combined storage capacity of 13,365,638 gallons, and a distribution system serving over 9,600

1 customers. Staff reviewed H2O's financial condition as documented in H2O's 2012 Annual  
2 Report. H2O's wells have adequate well production and storage capacity to serve the existing  
3 connections.

4 6. The Town intends to interconnect the Town's water system with the H2O's system  
5 which would allow for the redundancy of the water supply in the event of emergencies.

6 7. The application indicates that the Town will also provide wastewater service to  
7 much of the area, and the cancellation of H2O's CC&N will have the effect of combining water  
8 and wastewater service in one municipal provider. H2O and the Town believe approval of the  
9 application is in the public interest. Staff agrees.

#### 10 RATES AND CUSTOMER SERVICE

11 8. After the acquisition, the Town will charge all customers the Town's currently  
12 existing rates. The vast majority of H2O's customers are served by ¾ inch meters and use  
13 between 7,000 and 10,000 gallons per month. Thus, the average H2O customer should see  
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#### 17 **Monthly Water Bill Comparison**

#### 18 **¾" meter (93% of H2O's Customers)**

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20,000	\$60.74	57.36	-\$3.38

9. The Town has experience owning and operating municipal water and wastewater utilities and has indicated that: (1) it intends to provide the same level of service to customers residing outside its existing service area at this date (i.e., H2O's former customers upon consummation) as it provides to customers living within the Town's service area; and (2) the new H2O customers will be governed by the same rate structure as customers located within the Town's existing service area. Thus, no distinction will be drawn, for rate or service purposes, between its current customers and customers now served by H2O. The ACC has previously approved the sale of another water company, Queen Creek Water Company, to the Town of Queen Creek (see Decision No. 70204), and the Town successfully assumed ownership and service without issue.

10. The Utilities Division Consumer Services' Database indicates that over the last three years, there have been six complaints against H2O concerning mostly billing issues. All complaints have been resolved. Consumer Services has not received any filings in opposition to this sale.

**CUSTOMER NOTICE**

11. H2O printed notice of this application in the *East Valley Tribune* on August 12, 2013. H2O also indicated that it mailed notice of this application to its customers on August 8, 2013.

...

COMPLIANCE

12. The Utilities Division Compliance Database does not indicate that H2O has any ACC compliance delinquencies. H2O is in good standing with the Commission's Corporations Division as well.

13. Per Arizona Department of Environmental Quality ("ADEQ") Compliance Reports dated July 12, 2013, ADEQ reported that the H2O water system, Public Water System ("PWS") No. 11-060, has no major deficiencies and is currently delivering water that meets water quality standards required by 40 C.F.R. 141 (National Primary Drinking Water Regulations) and the Arizona Administrative Code ("A.A.C."), Title 18, Chapter 4.

14. ADEQ or its formally delegated agent, the Maricopa County Environmental Services Department ("MCESD"), has reported (via Compliance Status Reports dated July 15, 2013) that the Town's water system (PWS No. 07-033) has no major deficiencies and is currently delivering water that meets water quality standards required by 40 C.F.R. 141 (National Primary Drinking Water Regulations) and A.A.C., Title 18, Chapter 4.

15. The Company is located within an Arizona Department of Water Resources ("ADWR") Active Management Area ("AMA"). According to an ADWR Compliance Status Report dated July 16, 2013, ADWR reported that the H2O water system is currently in compliance with departmental requirements governing water providers and/or community water systems.

16. The Town is located in the ADWR's Phoenix AMA. According to an ADWR Compliance Status Report dated August 7, 2013, ADWR reported that the Town's water system is currently in compliance with departmental requirements governing water providers and/or community water systems.

RECOMMENDATIONS

17. The Town has entered into a Purchase Agreement with H2O executed on June 19, 2013, to acquire H2O's assets and customers. The Town has experience owning and operating municipal water and wastewater utilities and will ensure a seamless transaction. Staff agrees with the Town and H2O that the sale of H2O is in the public interest.

...

19. Staff recommends approval of the transfer of the assets of H2O, Inc. to the Town of Queen Creek and that the Commission cancels the CC&N of H2O with the following conditions:

B. That the Town honors all liabilities of H2O relating to mainline extensions and customer deposits.

1. H2O, Inc. is a public service corporation within the meaning of Article XV, Section 2 of the Arizona Constitution.

3. Notice of the Application and an opportunity to be heard were provided as required by law.

5. The Town of Queen Creek is a fit and proper entity that is ready, willing and able to assume the responsibility of providing water utility service within H2O's currently certificated area.

ORDER

Decision No.

IT IS FURTHER ORDERED that H2O, Inc. shall notify the Commission by a compliance filing in this docket of the successful close of escrow finalizing the sale of H2O, Inc. to the Town of Queen Creek, within 30 days of the closing.

IT IS FURTHER ORDERED that our approval of this application is based upon the Town of Queen Creek's commitment to honor all liabilities of H2O, Inc. relating to mainline extensions and customer deposits.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

**BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, JODI JERICH, Executive Director of the Arizona Corporation Commission, have hereunto, set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
JODI JERICH  
EXECUTIVE DIRECTOR

DISSENT: \_\_\_\_\_

DISSENT: \_\_\_\_\_

SMO:VW:sms\RRM

1 SERVICE LIST FOR:  
2 DOCKET NO. W-02234A-13-0237

3 Steven A. Hirsch  
4 Bryan Cave LLP  
5 Two N. Central Avenue, Suite 2200  
6 Phoenix, AZ 85004-4406

7 Fredda J. Bisman  
8 James T. Braselton  
9 Dickinson Wright/Mariscal Weeks  
10 2901 North Central Avenue, Suite 200  
11 Phoenix, Arizona 85012-2705  
12 Attorneys for Town of Queen Creek

13 Paul Gardner, Director  
14 Utility Services Department  
15 Town of Queen Creek  
16 22350 S. Ellsworth Road  
17 Queen Creek, Arizona 85142

18 Lyn Farmer  
19 Chief Administrative Law Judge, Hearing Division  
20 Arizona Corporation Commission  
21 1200 West Washington Street  
22 Phoenix, Arizona 85007

23 Janice Alward  
24 Chief Counsel, Legal Division  
25 Arizona Corporation Commission  
26 1200 West Washington Street  
27 Phoenix, Arizona 85007

28 Steven M. Olea  
Director, Utilities Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007